

ATTACHMENT A

***PROGRAM REQUIREMENTS FOR
INFANT AND TODDLER CHILD CARE
RESOURCE PROGRAM
(FCAP)***

April 1, 2004 through June 30, 2005

PROGRAM REQUIREMENTS INFANT AND TODDLER CHILD CARE RESOURCE PROGRAM

The intent of this resource contract award is to improve the quality and availability of child care and to allow the contractor flexibility in the expenditure of the funds for one-time only items that primarily benefit the infant-toddler child care services program.

The following program requirements are provided to assist the designated legal entity in meeting the legislative intent. Each contractor is required, as a condition of its contract with the California Department of Education (CDE), Child Development Division (CDD) or as a California School Age Families Education (CalSAFE) program contract, to adhere to these requirements and Title 5 regulations pertaining to Child Development Programs, in addition to all other applicable laws and regulations. Any variance from these requirements, the applicable Title 5 regulations, laws and regulations could be considered a noncompliance issue and subject the contractor to possible termination of the contract.

This contract is funded through a grant from the federal Department of Health and Human Services and subject to Code of Federal Regulations (CFR) 45, Parts 98 and 99; the Child Care and Development Block Grant Act of 1990, as amended; Public Law 104-193; the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and 42 United States Code (USC), Section 9858. If the Catalogue of Federal Domestic Assistance (CFDA) number is 93596 (shown as FC# in the funding block), the fund title is Child Care Mandatory and Matching Funds of the Child Care and Development Fund. If the CFDA number is 93575, the fund title is Child Care and Development Block Grant subject to the Child Care and Development Block Grant Act of 1990; the Omnibus Budget Reconciliation Act of 1990, Section 5082; Public Law 101-508, as amended, Sections 658J and 658S; and Public Law 102-586.

I. GENERAL PROVISIONS

A. National Labor Relations Board/Federal Court Order

By signing this contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court has been issued by a federal court against the contractor within the last two (2) years because of failure to comply with a federal court order for compliance with an order of the National Labor Relations Board (Public Contract Code, Section 10296). This provision does not apply to public entities.

B. Notification of Address Change

Contractors shall notify the CDD in writing of any change in mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied with (1) board minutes verifying the change in address and (2) a copy of the notification to the Internal Revenue Service of the address change.

Contractors shall notify the CDD in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood or earthquake.

C. Issuance and Use of Checks

Except for external payroll services, private contractors shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDD.

Private contractors shall require two (2) authorized signatures on all checks unless: (1) the contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount; and (2) the annual audit verifies that appropriate internal controls are maintained.

D. Prohibition Against Loans and Advances

Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies. Contractors shall not advance unearned salary to employees. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received.

E. Materials Developed with Contract Funds

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the child development program. If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development program shall be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of State funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

F. Contractor's Termination for Convenience

1. General Termination for Convenience

A contractor may terminate the contract for any reason during the contract term. The contractor shall notify the CDD of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

Within fifteen (15) days from the date the contractor notifies the CDD of its intent to terminate the contract, the contractor shall submit a current inventory of equipment purchased in whole or in part with contract funds.

Upon receipt of a notice of intent to terminate, the CDD will transfer the program to another agency as soon as practicable.

The State shall only be obligated to compensate the contractor for net reimbursable program costs in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The State shall offset any monies the contractor owes the State against any monies the State owes under this contract.

2. Changes in Laws or Regulations

The CDD shall notify contractors in writing of changes in laws or regulations prior to the effective date or as soon as possible after enactment. If any laws or regulations are changed substantially during the contract period, the contractor shall have the option to discontinue performance and be relieved of all obligations for further performance.

The contractor has thirty (30) calendar days from receipt of notification of pending changes to notify the CDD in writing of the contractor's intent to terminate if the required changes are unacceptable to the contractor. The contract shall be deemed terminated sixty (60) calendar days after receipt of the notification of the intent to terminate.

G. Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the Corporations Code including standards of conduct and management of the organization.

H. Conflicts of Interest

For any transaction to which the contractor is a party and the other party is: (a) an officer or employee of the contractor or of an organization having financial interest in the contractor; or (b) a partner or controlling stockholder or an organization having a financial interest in the contractor; or (c) a family member of a person having a financial interest in the contractor, the transaction(s) shall be fair and reasonable and conducted at arm's length.

Based on corporate law (Corporations Code, Sections 310, 5233-5234, 7233 and 9243 as applicable) the general rules that would be followed to ensure that transactions are conducted "at arm's length" include: (1) prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and (2) all parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.

Rental costs under less-than-arms length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the action of the other. Such lease include, but are not limited, to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trust, or similar arrangements in which they hold a controlling interest. If the property is owned by the organization, allowable cost would include use allowance or depreciation only. If the property, is owned by the contractor rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance. Any transaction described in this paragraph shall be disclosed by the auditor in the notes to the financial statement in the annual audit.

Rental costs for equipment owned by affiliated organizations, officers or other key personnel of the contractor or their families are allowable only as use or depreciation allowance.

I. Americans with Disabilities Act

By signing this contract, the contractor assures the CDE that it shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 USC Section 12101 et seq.) as well as all applicable federal and state laws and regulations, guidelines and interpretations issued thereto.

J. Air or Water Pollution Violations (Government Code, Section 4477)

By signing this agreement, the contractor swears under penalty of perjury that the contractor is not: (1) in violation of any order or resolution not subject to review promulgated by the state Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution. This provision does not apply to public agencies.

K. Recycled Paper Certification (Public Contract Code, Sections 10308.5 and 10354)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer material and secondary material as defined in Public Contract Code, Sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content Appraisers or the American Institute of Real Estate Appraisal. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance. Any transaction described in this paragraph shall be disclosed by the auditor in the notes to the financial statement in the annual audit.

L. Child Support Compliance (Public Contract Code, Section 7110)

By signing this agreement, the contractor acknowledges that (a) it recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and (b) to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

M. Unlawful Denial of Services (Government Code, Section 11135)

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 USC, Section 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of an impairment as described in paragraph (1); or (3) being regarded as having an impairment as described in paragraph (1).

N. Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

O. Union Organizing and Activities

Contractor by signing this agreement hereby acknowledges the applicability to this agreement of Government Code, Sections 16645 - 6649.

1. Contractor will not assist, promote or deter union organizing by employees performing work on a State service contract, including a public works contract.
2. No State funds received under this agreement will be used to assist, promote or deter union organizing.
3. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

4. If the contractor incurs costs or makes expenditures to assist, promote or deter union organizing, the contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs. The contractor shall provide these records to the Attorney General upon request.

Contractor hereby certifies that no request for reimbursement or payment under this agreement will seek reimbursement for costs incurred to assist, promote or deter union organizing.

P. Equipment Inventory

Property records must be maintained that include a description of the equipment, serial number or other identification number, the source of the equipment, the acquisition date, the cost of the equipment, the location, use and condition of the equipment and any ultimate disposition date including date of disposal and sale price if applicable. A physical inventory of equipment must be taken at least every two years and reconciled with property records. A control system must be developed to monitor to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

II. AGENCY RESPONSIBILITIES

A. Use of Funds

These infant-toddler resource contract funds must be used for the benefit of infant and toddler children ages birth to three years. Agencies operating or sponsoring multiple infant and toddler child care service locations must expend the resource contract funds to provide benefit to all service locations proportionate with the numbers of subsidized infant-toddler children served at each location.

1. The contract funds may be used to:
 - a. Purchase equipment and materials for the infant and toddler program.
 - b. Expand recruitment and outreach efforts to enroll additional infant and toddler children.
 - c. Train staff to work with infant and toddler children ages birth to three years.
 - d. Make minor renovations and repair to the infant and toddler service area.

2. The contract funds may not be used to pay for:
 - a. The direct provision of child care services.
 - b. Construction of a facility to meet basic licensing requirements.
 - c. Purchase or improvement of land.
 - d. Lease or rent payments.
 - e. Salaries or benefits.

B. Reporting Requirements

Private agencies (including proprietary entities) that receive \$300,000 or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with OMB Circular A-133 and the "Audit Guide for Audits of Child Development and Nutrition Programs" prepared by CDE's Audits and Investigations Division (A&I).

Governmental and other public agencies (excluding school districts, county office of education and community college districts) must comply with the requirements of OMB Circular A-128 and the CDE's "Audit Guide." All other agencies (excluding school districts, county offices or education and community colleges) must submit a contractor audit performed in accordance with the CDE's "Audit Guide."

The resource grant funds are one-time only funds that must be expended after April 1, 2004, and prior to June 30, 2005. A report of expenditures is due to California Department of Education, Child Development Fiscal Services, upon full expenditure of the funds or no later than July 20, 2005.

The expenditure report must be made in the format provided for this contract (Form CDFS 9529). Please complete and submit this form directly to your assigned fiscal analyst at the following address:

California Department of Education
Child Development Fiscal Services
1430 N Street, Suite 2213
Sacramento, CA 95814

C. Reimbursement Costs

Reimbursable costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations.

Contracts and subcontracts shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to the CDE's represented employees computed in accordance with State Department of Personnel Administration (DPA) regulation, Title 2 California Code of Regulation, Subchapter 1.

Nonreimbursable costs will be determined in accordance with the current Resource and Referral Funding Terms and Conditions, Section V.F., "Nonreimbursable Costs."

Questions regarding the appropriateness of a proposed expenditure may be addressed to Linda Rivera, Child Development Assistant, at (916) 323-4905.